IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14690 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJENDRASINH RANJITSINH RATHOD(RAJPUT)

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 14690 of 2004

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 16/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Banaskantha at Palanpur on 21st August, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 8th September, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority considered two types of materials in arriving at a subjective satisfaction. The detaining authority relied upon a solitary crime registered against the petitioner before Ambaji Police Station on 12th June, 2004 against the petitioner under the Bombay Prohibition Act whereby it was alleged that the petitioner was found in possession of prohibited foreign liquor to the extent of 731 bottles. The detaining authority also relied upon the four incamera statements as recorded by the sponsoring authority on 7th July, 2004 as verified by the detaining authority on 16th August, 2004. The identity of the witnesses are not disclosed by the detaining authority claiming privilege under Section 9(2) of the PASA Act.

3. Out of four witnesses, one witness referred to an incident of 8th June, 2004 who witnessed that the petitioner and his accomplices were to transport the bulk of foreign liquor in one jeep car. On inquiring about the activity of the petitioner by the witness, he was beaten. The second witness also referred to an incident of 8th June, 2004, who witnessed the incident occurred with first witness and while the second witness attempted to rescue the first witness, he was threatened by the petitioner to kill. The third witness on 10th June, 2004 who witnessed the incident that near village Hadad, the petitioner was shifting the cartoon of prohibited liquor from his car to one other car. The witness stopped his vehicle and noticed the activities of the petitioner. Thereupon, the petitioner was excited and was about to beat the witness, who ran immediately in his vehicle. The fourth witness referred to the incident of 6th June, 2004. According to the fourth witness at about 5.00 P.M., the petitioner approached the witness and on pretext that his vehicle had broken down, the witness was taken to the jeep car of the petitioner. The witness noticed that the said jeep was loaded with cartoons of foreign liquor. The petitioner directed the witness to deliver the said bulk of prohibited liquor at Kheralu to one person with a red shirt worn. On refusal by the witness, he was beaten by the petitioner.

4. Relying upon the above materials, the detaining authority came to the conclusion that the petitioner was indulging in the activities of storing, selling and transporting prohibited foreign liquor. In view of the detaining authority, the activities of the petitioner were bootlegging activities affected the maintenance of public order and public health. The detaining authority also concluded that the activities of the petitioner were required to be prevented forthwith. The detaining authority, therefore, after considering the other measures available under the general law against the petitioner, came to the conclusion that there was no other alternative, except to detain the petitioner under the PASA Act. The detaining authority passed an order of detention of the petitioner, which is under challenge in this petition.

5. Learned advocate Mr.Kamlesh Kachhavah for the petitioner and learned AGP Mr.H.M.Prachchhak for the respondent No.3 were heard at length.

6. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue as to whether the order under challenge is vitiated on account of causing delay in passing the order of detention against the petitioner.

7. The factual data from the record reveal that the solitary case came to be registered against the petitioner on 12th June, 2004. The sponsoring authority recorded the incamera statements of the witnesses on 7th July, 2004, as verified by the detaining authority on 16th August, 2004 and the order of detention was passed on 21st August, 2004. Thus, there is delay of two months in passing of the order from the date of registration of solitary offence against the petitioner. The incidents which are unreported, revealed the period before the registration of crime against the petitioner. In this view of the matter, there is delay undoubtedly in passing the order of detention so as to snap the live link between the activities of the petitioner and in passing of the order by the detaining authority.

8. The facts of the present case are squarely covered by the decision of this Court in the matter of ELESH NANDUBHAI PATEL Vs. COMMISSIONER OF POLICE, AHMEDABAD CITY AND OTHERS, as reported in 1997 (1) GLR 381, wherein after relying upon a decision of the Apex

Court in the matter of Pradeep Nilkanth Vs. S. Ramamurty, as reported in 1993 (2) Suppli. S.C.C. 61, this Court has observed that unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself and bootlegging activities of the petitioner were required to be prevented forthwith. It is not understood that how the sponsoring authority took time to record incamera statements on 7th July, 2004. The detaining authority also verified those statements only on 16th August, 2004 and thereafter, the order came to be passed on 21st August, 2004. Thus, in the present case, the proximiti in between the alleged bootlegging activities of the petitioner and action taken against him under the detention law is broken which is fatal to the order of detention passed against the petitioner. In this view of the matter, the subjective satisfaction arrived at by the detaining authority, is not legal, valid and in accordance with law. The order under challenged, therefore, is required to be quashed on this ground alone.

9. In the result, the petition is allowed. The order passed by the District Magistrate, Banaskantha, at Palanpur on 21st August, 2004 against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Rajendrasinh Ranjitsinh Rathod [Rajput] is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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